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No. 00-109

Supreme Court, U.S.
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In The

Supreme Court of the United States

BETH LEONARD, On Behalf of Herself and all Others Similarly Situated,

Petitioner,

vs.

NORTHWEST AIRLINES, INC.,

Respondent.

On Petition For Writ Of Certiorari To The State Of Minnesota Supreme Court

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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I. ARGUMENT

A. Respondent Incorrectly Asserts That This Court Has Already Decided the Question Presented

The Question Presented by this Petition is clear and easily stated: whether, under *American Airlines v. Wolens*, 513 U.S. 219 (1995), the Airline Deregulation Act ("ADA") preempts state-court contract actions in which a ticket purchaser sues an airline to *recover* monies she paid pursuant to penalty clauses that are uniformly forbidden under contract law. *Wolens* appears to answer the Question in the negative, because "contract law is not at its core 'diverse, nonuniform, and confusing,' " *id.* at 233 n.8 (citation omitted), and the ADA "permits state-law-based court adjudication of routine breach-of-contract claims." *Id.* at 232.

But Respondent's Brief in Opposition clouds the Question Presented. It fails adequately to address Petitioner's claim that the Minnesota courts have reached decisions that conflict with governing Supreme Court precedent, and responds to the overriding question of whether certiorari is warranted with little more than a cursory brief on the merits. Respondent's Opposition incorrectly claims that Petitioner is trying to rewrite "a bargained-for price term" in a contract, Opp. at i, and "avoid" the entire contract. Opp. at 4. Not so. Petitioner Beth Leonard admits that she breached the contract of carriage, Pet. at 5, and seeks only to recover monies she paid pursuant to illegal contractual penalties that are

uniformly forbidden under settled American jurisprudence.[1]

Respondent's Opposition also asserts, without foundation, that this Court already has "explicitly addressed" the issue presented in this case, "clear[ly]" holding that Petitioner's claims are preempted. Opp. at 1. That simply is untrue. *Wolens* addressed only whether the ADA preempted the application of Illinois consumer protection and contract law to a contract dispute between Myron Wolens and American Airlines. *Wolens*, 513 U.S. at 225-26. This Court held that Plaintiff Wolens' common-law contract claim could proceed, *id.* at 226, and sent the dispute back to the Illinois state court for a "full airing" of "contract interpretation" issues. *Id.* at 234. It certainly did not expressly consider whether either party could assert a contract *defense* in the action – although the Minnesota Opinion incorrectly believed it did. App. 11. Thus, Petitioner's Question Presented remains unanswered, and the lower courts' erroneous interpretations of the ADA and resultant opinions that conflict with *Wolens* remain ripe for review by this Court.

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[1] Respondent tries to manufacture an incongruity in contractual penalty law by comparing Maine's burden-of-proof requirement related to liquidated damages with Minnesota's holding that liquidated damages clauses are presumptively valid until proved otherwise. Opp. at 8 n.5. These *procedural* differences do not alter by one iota the underlying *substantive* reality: penalties disguised as liquidated damages clauses will not be enforced in *any* state in the Union. Pet. at 5-6.

B. Respondent Fails to Show Why This Court Should Not Decide Whether the Airlines May Properly Utilize Overbroad Preemption Decisions to Skirt Federalism Concerns and Ignore Normative Contract Rules

Respondent barely addresses the second half of the Petition, in which Petitioner explained that the Question Presented poses an important issue of federal law with significant practical consequences. Petitioner pointed out that the Minnesota Opinion improperly elevates airlines to modern-day fiefdoms, unaccountable to any injured party asserting – or defending against – contract claims that cannot be pigeonholed as simple "breaches." Pet. at 13-14.

The Respondent does not answer Petitioner's argument that bedrock principles of federalism require that courts not expand the scope of preemption beyond that which Congress clearly mandated. Pet. at 14. Nor does Respondent adequately respond to the observation this Court made when it last addressed ADA preemption in 1995: that ADA issues could not be settled " 'on the basis of one or two cases, but require a closer working out.' " *See Wolens*, 513 U.S. at 234-35 (citation omitted).

That "closer working out" has yet to be completed.[2] Even the Minnesota Court of Appeals admitted as much.

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[2] *See also In re Air Transp. Excise Tax Litig.*, 37 F. Supp. 2d 1133, 1139 (D. Minn. 1999) (courts are "struggl[ing] to draw the line that separates allowable state law claims from ADA-preempted ones"); *Charas v. Trans World Airlines*, 160 F.3d 1259, 1263 (9th Cir. 1998) (en banc) (scope of ADA preemption has been the "source of considerable dispute since its enactment").

See App. 16 ("the 'line separating allowable claims from ADA-preempted ones remains fuzzy' "). It matters not that Respondent has dredged up a few cases from around the country that reached airline-friendly preemption conclusions. Opp. at 10-11. The fact that they incorrectly interpret the ADA and produce results in conflict with *Wolens* actually bolsters Petitioner's argument that a writ of certiorari is warranted. Moreover, this Court has never intimated that even a measurable trend of decisions in the lower courts warrants any deference in the face of erroneous statutory interpretation.[3] Although the lower courts may properly be regarded as laboratories in which issues may percolate and work themselves out, Respondent fails to explain why this Court should not step in at this point to correct an experiment gone awry.

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[3] *See, e.g., Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995) (reversing long line of appellate decisions holding that § 12(2) of the Securities Act of 1933 applies to private placements of securities).

II. CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

DATED: August 31, 2000

Respectfully submitted,

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